IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE V.ESWARAIAH

WRIT PETITION NO : 12564 of 2003

Between:

Lt. Col. K.D. Rana S/o. Late Sri Sher Singh Rana, EME records, Secunderabad, AP

..... PETITIONER

AND

1 Chief of Army Staff Army Headquarters, DHQPO, New Delhi-11.

2 Military Secretary, M.S. Branch, Army Headquarters, DHQPO, New Delhi-11

3 Commandant Armoured Corps Centre and School, Ahmednagar, Maharastra.

4 General Officer Commanding, Andhra, Tamilnadu, Kerala, Karnataka and Goa Area, Island Grounds, Chennai (Tamilnadu).

5 Government of India represented by Secretary Ministry of Defence, South Block, DHQPO, New Delhi-11.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records from respondent No.2 relating to the order dated 18 June, 2002 and quash the same by declaring it as illegal, arbitrary, wholly unconstitutional, null and avoid and set-aside the same, and consequently direct the second respondent to promote the petitioner to the rank of Colonel with retrospective effect

with all attendant benefits due to him.

Counsel for the Petitioner: MR.K.GOPALA RAO, Advocate

Counsel for the Respondent Nos.1 to 5 : Mr.A.Rajasekhar Reddy, Senior Central Government Standing Counsel.

The Court made the following :

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ORDER:

The petitioner is a Lieut Colonel (in brief Lt.Col.) in Army. He submits that he maintained spotless record throughout his service and his seniors have always appreciated his performance. He was never counselled or warned by any of his Initiating/Reviewing Officers while writing his Annual Confidential Reports (ACRs) for any shortcomings/Lapses during his entire service of 24 years so far.

He is aggrieved of the order of Selection Board of the Army dated 18-6-2002, which was communicated by the second respondent to him, stating that the case of the petitioner has been considered by No.3 Selection Board for promotion to the rank of acting colonel as a final review case of 1979 batch. The petitioner has not been empanelled for promotion based on his overall service profile and comparative batch merit. The petitioner having been empanelled on three occasions, he is not eligible for further promotion under the existing rules. Aggrieved by the said order of non selection of the petitioner to the higher rank of colonel, he preferred a statutory complaint to the Government of India, which was rejected by an order dated 17-10-2002.

It is stated that in Army, selection to the rank of Lt. Colonel and above is on the basis of merit adjudged by Annual Confidential Reports over a period of time. The policy followed at the time of his selection was, the Selection Board considered all his Annual Confidential Reports commencing from the ninth year of his service i.e., from 1988 onwards. The marks given from each quality set out in the Annual Confidential Reports by Initiating Officer (IO) and the

Reviewing Officer (RO) are graded. As per the grades, 9 marks are treated as ‘outstanding’, 8 and 7 marks are treated as ‘above average’, 5 and 6 marks are treated as ‘high average’. It is the case of the petitioner that from 1988 onwards his performance was graded ‘above average’ by all the Initiating Officers. Annual Confidential Reports of the Initiating Officer are shown to the officers, but the assessment made by the Reviewing Officer were not shown and therefore they are not known to him. The apprehension of the petitioner is that the Reviewing Officer has not given similar grading as that of the Initiating Officer and therefore, he was not selected to the rank of Colonel. It is further apprehended that the reason for not getting selection to the rank of colonel is ‘subjective assessment’ by a couple of Reviewing Officers, who have not seen him or had any occasion to review his work. Such Reviewing Officers in question were Maj.Gen. A.S.Sandhu and Maj.Gen. I.N.Luthra, both Commandants Armed Corps Centre and School Ahmednagar and Maj.Gen.R.S.Nagara under whom his unit was placed during the relevant period between 1992-93 and 1995-97. The said three Reviewing Officers had no knowledge of his work and therefore, they are not competent to review his Annual Confidential Reports. They did not see him, interact him, inspect his unit and visit his unit.

The reports rendered by the said Reviewing Officers (respondents 3 and 4) are sought to be produced along with his complete career dossier (ACRs from 1988 onwards till date). Pursuant to the orders of this Court, the Annual Confidential Reports of the petitioner from 1988 onwards were produced and I have perused the complete Annual Confidential Reports of the petitioner.

The learned counsel appearing for the petitioner submits that as the Reviewing Officers have no personal knowledge about the professional ability of the petitioner and the grading rendered by the Reviewing Officers (respondents 3 and 4) on the petitioner is to be set aside and in order to ascertain or confirm the subjective assessment of respondents 3 and 4, their gradings have to be compared to the corresponding grading of the Initiating Officers

during the relevant period and also with the reports rendered by other Reviewing Officers, who are competent to review his Annual Confidential Reports for the period before and after the inconsistent/controversial reports.

It is also stated that the Head of the Department of the petitioner who is the Deputy Director General (Inspector of Records) conducted annual inspection of the Record Offices, submitted a technical report in respect of the Annual Confidential Reports. The assessment made by the petitioner's Head of the Department would also show over the years that his ratings are in line with those of Initiating Officers as both of them have sufficient knowledge of his professional competence. The Reviewing Officers never intimated the petitioner while lower grading by giving lesser marks. It is stated that when they have brought down the marks from 8 as he was enjoying all along an 8 point report, he is entitled to be informed the change in the form of an advice, but such a down grading on the personal life of the petitioner was never informed to him and such a grading is liable to be set aside and it cannot be taken into account while considering his promotion to the rank of Colonel.

The learned counsel appearing for the respondents submits that the promotions in the Army up to the rank of Major are by time scale promotions and from Major to Lt. Colonel and above are through Selection Boards. All the officers of the petitioner batch are considered together with same cut off Annual Confidential Reports and inputs and on the basis of individual profile of the officers and the batch merit, their cases were considered for approval. Seniority in itself is no consideration for such approval. As per the policy contained in para 108 of Regulations for the Army, 1987, each officer is entitled to three considerations only for promotion to the selection ranks i.e., from Major to Lt. Colonel and above, namely fresh consideration, first review and final review various reporting. In case an officer is not approved as fresh case, but approved as a first review or final review case, he loses seniority accordingly vis-à-vis his original batch. After three considerations, if any officer is not

approved, he is deemed to have been finally superseded as per the policy contained in para 108 of Regulations for the Army, 1987. The Army is a pyramidal organization and therefore, suppression is a common incidence of service.

It is stated by the learned Senior Central Government Standing Counsel that the assessment of an officer in Annual Confidential Reports is regulated by the Special Army Order 3/S/89 and other relevant policies. The gradings are numerical from 1 to 9 (overall as well as in personal qualities and performance variables in different qualities) and in the form of pen picture also. The entire assessment of an officer in any Annual Confidential Reports consists of assessment on various reporting Officers whose assessment is independent of each other. While considering an Officer for promotion to a selection rank, the Selection Board takes into consideration number of factors such as war/operational reports, course reports, Annual Confidential Report, performance in command and staff, honours and awards, disciplinary background. Therefore, it is incorrect to state that Annual Confidential Reports alone are the criteria for promotion. Selection/rejection is based upon the overall profile of an officer vis-à-vis his comparative batch merit. The petitioner did not make a grade, based on his overall profile as compared to the comparative batch merit. The Selection Board assessed the relative merit of various officers and selected the more suitable and meritorious candidates.

It is stated that the apprehension and contentions of the petitioner are misplaced and without any basis whatsoever. The endorsement in the Annual Confidential Reports at the relevant time were governed under Special Army Order 3/S/89, which prescribe only rendition of minimum physical service during the period covered by the Annual Confidential Reports and no physical interaction to render the concerned officer eligible for endorsement of confidential report. The physical interaction is not provided for, since the senior reporting officers are otherwise also due to supervisory nature of duties in a position to assess the performance of the ratee. The

petitioner has not challenged any Army order. All the Annual Confidential Reports of the Reviewing Officers are inconsonance with the overall profile of the petitioner. The Senior Officers are in a position to review the performance of the petitioner through the Initiating Officers and other inputs in the normal course of their functioning with or without interacting physically with a ratee. In the impugned Annual Confidential Reports, the respective reviewing officers have given positive recommendations and above average figurative assessment, which is inconsonance with overall profile of the petitioner. Therefore, it is incorrect to state that the Reviewing Officers have down graded the profile of the petitioner in his Annual Confidential Reports. The very purpose of technical reporting by Head of Service is to have input in different qualities of the ratee, which may be more objectively assessed in the technical channel rather than in normal command and control channel by Initiating Officer and Reviewing Officer. The two assessments are independent of each other. The entire record of Officers including the petitioner is placed before the Selection Board to assess their suitability for the next rank.

This Court perused the records produced by the learned Senior Central Government Standing Counsel. The marks given for each quality is set out in the Annual Confidential Reports by the Initiating Officer as well as the Reviewing Officer are similar to the previous and subsequent Annual Confidential Reports of the petitioner and there was no down grading on the personal file of the petitioner by any of the Reviewing Officer during the relevant period and therefore, I am of the opinion that there was no adverse entry by any of the Reviewing or Initiating Officer. The Annual Confidential Reports of the petitioner were graded above average, securing the marks certain times 7 and certain other times 8. There was no downgrading of marks. Therefore, the apprehension of the petitioner is found incorrect. The records were perused in the presence of both the learned counsel appearing for the parties.

A similar contention that the Reviewing Officer should have personal acquaintance with the officer under report was considered by my learned Brother Sri C.V.Ramulu,J in W.P.No.7466 of 2003 and batch and held that:

> ***"There is no necessity that a Senior Reviewing Officer should have personal acquaintance with the Officer under report under the relevant Army Rules and Regulations. The Annual Confidential Reports need not be communicated to the Officer if the figurative assessment is above average. If the figurative assessment is low or below average and when the brief comments (pen picture) contains adverse or advisory remarks, in such cases, complete pen picture together with comments on guidance for improvement will have to be communicated to the officer. Further, the box grading is required to be communicated when the assessment is low or below average as per paras 103 to 106 of Special Army Order (SAO). Mere showing of Confidential Reports to the Officer reported is enough. In all the Annual Confidential Reports, the Reviewing Officer as well as Initiating Officer awarded the marks 7 and above with an endorsement "may be recommended" and there is no adverse remark or down gradation in the Annual Confidential Reports".***

Similar contentions and relevancy of the cases cited by the learned counsel appearing for the petitioner were also elaborately considered in the said Judgment and held that the aim of Annual Confidential Reports broadly is to have an objective assessment of an officer's professional and personal qualities. The Special Army Order contemplates that an officer reported upon must have worked physically under the Initiating Officer for at least 90 days during the period covered by the report and the said period of 90 days need not be continuous. However in the instant case, the Initiating Officer and Reviewing Officer have worked more than 90 days. The adverse remarks made by the Initiating Officer alone shall be communicated to the concerned officer. There are no adverse remarks in the case of the petitioner and therefore, the Annual Confidential Reports were not communicated to him. The petitioner was never down graded from above average. There is no necessity that the RO should have personal acquaintance with the officer under report.

In fact, the petitioner admitted to the extent that the grading system as

given is factual. The only complaint of the petitioner is that couple of officers i.e., respondents 3 and 4 did not know him, did not interact with him and did not have any knowledge about his professional grading. Therefore, they have insufficient knowledge about the petitioner and the Annual Confidential Reports written by them are liable to be ignored. Such contention that the in-charge Reviewing Officer never met with such officer and the said Reviewing Officer even does not know about such officer since the functioning of such officer was limited to the Initiating Officer through his group officer was considered and rejected in the said Judgment by my learned Brother Sri C.V.Ramulu,J, since there is no necessity under Special Army Order that the Reviewing Officer must have known the petitioner personally.

It is well known principle of administrative law that when the relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus to the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether process in reaching the decision has been observed correctly and not the decision as such. In view of the matter, I do not find any justification to interfere with the order of the Selection Board and confirmed by the Central Government.

The perusal of the records shows that though the Annual Confidential Reports of the petitioner from 1992-93 and from 1995-98 are well balanced, corroborated each other, moderated and consistent with overall profile of the officer and all other Annual Confidential Reports earned by the petitioner in the reckonable profile are also well balanced. But, the others are found more meritorious than the petitioner and therefore, the petitioner was not selected for the next post of full Colonel. The Selection Board has taken into account the total profile of the petitioner's Annual Confidential Reports and on apprisal of the same on the entire service profile, which has been taken care by the authorities concerned, but still others were found

more meritorious than the petitioner and therefore, the petitioner was not selected to the higher post and therefore, the said decision cannot be interfered by this Court. For the aforesaid reasons, I do not find any merits in the Writ Petition and the petitioner is not entitled for any relief.

The Writ Petition is accordingly dismissed. No order as to costs.

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V.ESWARAIAH,J

Date: 20-12-2004.

Shr.

Asst. Registrar.

One fair copy to the Hon'ble Mr.Justice V.Eswaraiah for his Lordship's kind perusal.

Copies to:

1 Chief of Army Staff Army Headquarters, DHQPO, New Delhi-11.

2 Military Secretary, M.S. Branch, Army Headquarters, DHQPO, New Delhi-11

3 Commandant Armoured Corps Centre and School, Ahmednagar, Maharastra.

4 General Officer Commanding, Andhra, Tamilnadu, Kerala, Karnataka and Goa Area, Island Grounds, Chennai (Tamilnadu).

5 The Secretary to Government of India, Min.Defence,
South Block, DHQPO, New Delhi-11.

6 . The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

7 . The Secretary, A.P., Advocates Association Library, High Court Buildings, Hyderabad.

8. Eight L.R.Copies.

9. Two C.D.Copies.